

**DISTRICT OF COLUMBIA COURT OF APPEALS
AGREEMENT TO MEDIATE**

Case: _____

Consistent with Title 16, Chapter 42 of the D.C. Code, the participants in this mediation agree to participate in mediation pursuant to the following terms and conditions:

1. **Definition of Mediation**: Mediation is a process in which a mediator facilitates communication and negotiation between the parties to assist them in reaching a voluntary agreement regarding their dispute.
2. **Role of the Mediator**: The mediator does not provide legal advice, decide the issues or impose a solution on the parties. The mediator assists the parties in identifying issues, reducing obstacles to communication and maximizing the exploration of alternatives.
3. **Good Faith Participation**: The participants agree that they are entering into this mediation process in good faith and shall make a sincere effort to arrive at a mutually acceptable resolution of the dispute. During the proceedings, any party or the mediator may elect to terminate the mediation.
4. **Caucus**: The mediator may meet separately with one or more parties (“caucus”) at any time during the mediation. All communications made during a caucus are confidential and may not be disclosed to any other participant in the mediation except to the extent the participants in the caucus give permission for the mediator to do so.
5. **Confidentiality of Mediator and Mediation Program staff**: The mediator and Mediation Program staff shall maintain the confidentiality of all mediation communications¹. The mediator or Mediation Program staff shall not be called as witnesses or deponents in any proceeding, or be compelled to produce documents, related to this dispute.
6. **Participant Confidentiality**: The participants will maintain the confidentiality of all mediation communications and will not discuss information shared in mediation to persons who are not directly or indirectly a party to the negotiations.
7. **Privileged Communications**: Mediation communications are privileged and are not subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided in D.C. Code § 16-4204, or one of the following exceptions apply:
 - Communications in an agreement evidenced by a record signed by all parties to the agreement.
 - Threats, or statements of a plan to inflict bodily injury as defined by D.C. Code § 22-407, or to commit a crime of violence as defined by D.C. Code §§ 22-4501 (4) and 23-1331.

¹ A “mediation communication” is a statement (oral, written, in a record, verbal, nonverbal) that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator.

- Communications intentionally used to plan, attempt to commit, or commit a crime, or to conceal an ongoing crime or ongoing criminal activity.
 - Communications sought or offered to prove or disprove:
 - o a claim or complaint of professional misconduct or malpractice filed against a mediator or participant; or
 - o abuse, neglect, abandonment or exploitation in a proceeding in which a child or adult protective services agency is a party.
 - Communications determined by a court, administrative agency, or arbitrator to be otherwise unavailable, the need for the evidence substantially outweighs the interest in protecting confidentiality, and the communication is sought or offered in a court proceeding involving a felony or misdemeanor or a proceeding to prove a claim to rescind, reform or a defense to avoid liability on a contract arising out of mediation.
8. **Otherwise Admissible:** Evidence or information that is otherwise admissible does not become inadmissible or protected from discovery solely by reason of its disclosure or use in mediation.
9. **Mediator Communication with the Court:** The mediator may disclose to the Court whether a mediation was held or terminated; whether a settlement was reached; attendance; and mediation communications evidencing abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting such individuals from such mistreatment.

By signing below, I acknowledge this _____ day of _____, 20____, that I have read, understand and agree to abide by this agreement.

MEDIATOR

PARTY

COUNSEL

PARTY

COUNSEL

PARTY

COUNSEL

PARTY

COUNSEL